



Minutes
Board of Zoning Appeals
May 16, 2016
Council Chambers, City Hall
Fredericksburg, Virginia

MEMBERS PRESENT

Helen P. Ross, Chair
Jay Jarrell III, Vice-Chair
Matthew Muggeridge
Beatrice Paolucci
Richard Conway, Alternate

MEMBERS ABSENT

STAFF

Mike Craig, Zoning
Administrator
Kathleen Dooley, City
Attorney
Phaun Moore, Secretary

Ms. Ross called the meeting to order at 4:00 p.m.

OPENING REMARKS

Ms. Ross determined that a quorum was present and public notice requirements had been met.

ELECTION OF OFFICERS

Ms. Paolucci nominated Ms. Ross as Chair. Mr. Jarrell seconded. Ms. Ross accepted. Mr. Jarrell nominated Ms. Paolucci as Vice-Chair. Mr. Muggeridge seconded. Ms. Paolucci accepted.

DISCLOSURE OF EX PARTE COMMUNICATIONS

Ms. Ross asked if any Board member had engaged in *ex parte* communications on any item before the Board. Ms. Paolucci said that she had done some research in preparation for the hearing. She said she had gone to the City's Real Estate Department and the Court House, and had communicated with the City's IT department.

DISCLOSURE OF CONFLICTS OF INTEREST

Ms. Ross asked if any Board member had any conflicts of interest on any item before the Board. No one indicated that they had any conflicts of interest.

APPROVAL OF AGENDA

There were no additions or changes to the agenda.

Ms. Paolucci made a motion to accept the agenda as presented. The motion carried unanimously.

APPLICATIONS

1. **AP 2016-02: The Bragg Hill Corporation** appeals the Zoning Administrator's determination that a certain parcel of land consisting of 0.806 acres more or less is zoned to the City's R-2 Residential Zoning District. The property is shown on the GIS system as GPIN 7870-00-3906. The property has no assigned address but is generally located on the west side of Wicklow Drive between the Bragg Hill townhomes fronting on Rann Court to the south and the Sunshine Ballpark to the north. The City's Official Zoning Map shows the property as being zoned R-2. The Bragg Hill Corporation contends the property was rezoned to R-12 in 2014 as part of Ordinance 14-06.

Ms. Dooley discussed whether the applicant was an aggrieved party to file an appeal. Bragg Hill Corporation is the owner of property that is adjacent to the subject parcel but the parcel itself has been conveyed by separate deed to Mr. Glazebrook and Mr. Degen.

Ms. Dooley stated that there was a two part inquiry to determine standing when the appellant is not the landowner. Ms. Dooley referenced a 2013 decision by the Virginia Supreme Court in a case involving the Friends of the Rappahannock. The question in that case was whether adjacent landowners have an interest that makes them an aggrieved party. The Virginia Supreme Court looked at two factors; one, do the appellants own property that is nearby; and, two whether the complainant has alleged facts demonstrating a particularized harm to some personal or property right or the imposition of a burden or obligation on the petitioner different from that suffered by the general public.

Ms. Dooley stated that the Bragg Hill Corporation did not address these two inquiries in their appeal letter and it is up to them to address them before the board.

Mr. Craig discussed his determination that the subject parcel was zoned R-2. He introduced a document entered into the record by Ms. Paolucci prior to the meeting from the City's land records. He introduced a second document that was Mr. Leming's reaction to correspondence between Ms. Paolucci and Ms. Kim Williams earlier in the day. He introduced a third set of documents that were labeled supplemental exhibit.

Mr. Craig stated that in February 2014 the City undertook a rezoning that contained an exhibit map. The City rezoned any vacant property or single family home lots, including what was then GPIN 7860-90-3994 from R-1 to R-2. The City also rezoned existing developments to zoning classifications that most closely mirrored their existing use. The Bragg Hill Townhomes were rezoned from R-1 to R-12, the Heritage Park Apartments were rezoned from R-1 to R-16, and the Riverview Apartment complex was rezoned from R-1 to R-30. The purpose of the rezoning was to bring existing uses into conformance with the zoning ordinance.

Mr. Craig stated that the City rezoned property based on address. If a parcel was vacant then the City relied on the GIS map and the GPINs assigned at that time. Ms. Williams provided an exhibit included in the staff report that showed how the GPINs were mapped at the time of the rezoning. The 0.806 parcel was included within GPIN 7860-90-3994 at the time of the City initiated rezoning.

Exhibit A to the City initiated rezoning clearly stated that GPIN 7860-90-3994 was rezoned from R-1 to R-2.

Mr. Craig stated that the 0.806 parcel was never reviewed by the City through a subdivision process. Prior to September 17, 2015 the parcel was never created as a separate GPIN in the GIS system. The 0.806 parcel was part of GPIN 7860-90-3994.

Mr. Craig stated that during a land transfer in October 2013, the Apellant's attorney applied GPIN 7860-90-9711 to the coversheet of the instrument transferring the document. The number was not assigned or reviewed by the City. The transaction was then transferred from the Clerk of Court to the City's Real Estate Department who assigned the information related to the 0.806 parcel to the mapped entity GPIN 7860-90-9711. The Apellant's Exhibit D and E shows that, based on the recording error, the underlying information associated with the 0.806 acre parcel was tied to the wrong GPIN, though the mapping was correct.

Mr. Craig stated the error in the land records dates back to confusion created by a difference between a plat in 1972 where the 0.806 is left out and a 1976 deed that includes the 0.806 parcel.

Mr. Craig stated that once the incorrect GPIN number was applied to the land transfer in 2013, that number would have been transferred from the Clerk's office to the City Treasurer where it would be used to generate tax bills.

Mr. Craig stated that after the City initiated rezoning, a contract purchaser had been working with the City to rezone both the 0.806 acre parcel and the larger parcel GPIN 7860-90-3994. The application was signed by Mr. Degen.

Mr. Craig stated that Mr. Degen had been working with the City to clear up tax confusion on the parcel in 2015 and that those efforts led to the assignment of a new GPIN number on the 0.806 acre parcel.

Mr. Craig stated that any excess taxes charged by the City would be remitted by the City.

Mr. Jarrell asked if the subject parcel was not listed in the 2014 rezoning.

Mr. Craig said the rezoning was done by GPIN number.

Ms. Dooley said the subject parcel was listed in the rezoning because it was part of the larger parcel on the Tax Map and it did not have its own independent parcel identification at the time of the rezoning.

Mr. Jarrell asked how many other circumstances in the City there were that have multiple parcels under one GPIN number.

Mr. Craig said there were a lot.

Ms. Paolucci questioned how the subject parcel became part of the larger parcel 7860-90-3994 rather than parcel 7860-90-9711.

Ms. Dooley said they believe the error was made originally with the 1972 plat and the 1976 deed but was not picked up when the City drew their original tax maps. The client's attorney applied the GPIN number for the smaller parcel when looking at these older documents.

Ms. Paolucci said she was on the City Council at the time of the 2014 rezoning and she believes the subject parcel was included in parcel 7860-90-9711.

Mr. Muggeridge asked how Supplemental Exhibit 5 clarified the Zoning Administrator's position.

Mr. Craig said that Supplemental Exhibit 5 was a voluntary proffer statement acknowledging that the entirety of the property including the 0.806 acre parcel was zoned low density residential and a request by one of the owners of the property to rezone the entirety of the property including the 0.806 acre parcel to R-12.

Mr. Muggeridge asked how Mr. Degen (the signatory of the voluntary proffer statement was associated with the appellant).

Mr. Craig said that Mr. Degen was a member of the Bragg Hill Corporation with Mr. Glazebrook and that he is also part owner of the 0.806 acre property.

Ms. Paolucci stated that the application was from February 2014 but the parcel wasn't assigned a new GPIN until September 2015.

Mr. Craig said that was correct, however, there were three things going on. First was the City initiated rezoning, which occurred in early 2014. Second was the rezoning request which occurred after the rezoning. Third was the change in GPIN number which was related to City tax records.

Mr. Jarrell asked if staff reviewed and approved of the rezoning application.

Mr. Craig said the City accepted the application.

Mr. Jarrell stated that the GPIN of the 0.806 parcel was listed as GPIN 7860-90-9711 and could be seen as acknowledgement by the City that the 0.806 acre parcel was GPIN 7860-90-9711.

Mr. Conway asked what was the purpose of the City led rezoning.

Ms. Dooley stated that the R-1 designation was applied post annexation in 1984 and used as a holding zone until a more appropriate zoning district could be applied, which happened in 2014.

Mr. Muggeridge asked when the new GPIN number was applied.

Mr. Craig stated that the new number was applied in September 2015. The impetus for changing GPIN numbers is when a land owner or other person brings an error to the GIS department.

Mr. Muggeridge asked what the origin of the change in GPIN number was.

Mr. Craig stated that Mr. Degen had come in to the office stating that he was being taxed wrong on the parcel so as part of fixing that error, staff changed the GPIN number.

Ms. Ross called on the Appellant.

Mr. Clark Leming represented the Appellant and made a request for a five minute recess in order to call Mr. Degen and bring him to the meeting in order to respond to staff testimony.

Ms. Ross granted the recess.

After a five minute recess, Mr. Leming stated his intent to address standing and then substantive issues.

Mr. Leming stated that in October 2013 the Bragg Hill Community Corporation transferred the 0.806 acre parcel to the Bragg Hill Corporation. Mr. Leming stated that this 0.806 acre parcel was part of the 6.25 acres transferred to the Bragg Hill Community Corporation in 1976. In February 2015, the parcel was transferred to Mr. Glazebrook and Mr. Degen personally.

Mr. Leming stated that the Bragg Hill Corporation is an S corporation and Mr. Glazebrook owns 90% of the corporation. Mr. Degen owns 10%. Mr. Leming entered a form into the record showing the distribution of shares in the Bragg Hill Corporation.

Mr. Leming stated that the parcel was never merged into the larger 33.96 acre parcel. The reason that the Bragg Hill Corporation is an aggrieved party is that it is a small closely held corporation that Mr. Glazebrook largely controls. The letter from Mr. Craig that is being appealed was addressed to the Bragg Hill Corporation in care of Mr. Glazebrook. Largely speaking, the Bragg Hill Corporation and Mr. Glazebrook and Mr. Degen are very much the same entities and what is good for the Bragg Hill Corporation is good for Mr. Glazebrook and Mr. Degen.

Mr. Leming stated that the appeal was based on the determination letter.

Mr. Leming stated that Mr. Glazebrook had transferred the 0.806 parcel because Mr. Glazebrook wanted to move forward with the piece they believed was rezoned R-12 and that they were not ready to move forward on the larger parcel zoned R-2. The development on the R-12 parcel was to be a small demonstration project and that it would be harmful to the Bragg Hill Corporation if the smaller project – a ten unit subdivision - did not proceed.

Mr. Leming stated under § 15.2-2311 that a written notice or order shall be sent by registered or certified mail or posted at the last known address of the property owner. The letter did not come by registered or certified mail, it was simply mailed to him, which does not comply. The statute says that the only thing binding is the ultimate decision but not the procedural error where he was not properly served by the notice in the first place. The BZA should make a determination over whether a determination has been properly served in addition to the determination on whether or not the Bragg Hill Corporation has standing.

Mr. Leming stated that the 0.806 acres came from the Bragg Hill Community Corporation and the larger 6.25 acre parcel. The 0.806 acre parcel was never part of the larger 33.96 acre parcel.

Mr. Leming stated that the Commissioner of Revenue has consistently shown that the parcel was GPIN 7860-90-9711 all the way up to April 16, which was close to the date the appeal was filed. The zoning had changed, however, between January and April from R-12 to R-2. Mr. Leming stated that Mr. Degen, Mr. Glazebrook, nor the Commissioner of Revenue knew about the GPIN change in September 2015 and that the change was only made in response to the appeal.

Mr. Leming stated that GPIN 7860-90-9711 was clearly rezoned to R-12. He said the issue is what GPIN 7860-90-9711 was at the time of the rezoning and that all of the materials they have indicate that the 0.806 acre parcel was GPIN 7860-90-9711 at the time. Mr. Leming stated that everyone involved understood the 0.806 acre parcel was GPIN 7860-90-9711 at the time of the rezoning and that the zoning application as Supplemental Exhibit 5 backs that up.

Mr. Leming stated that the only entity that can rezone property is the City Council and that if the City wants to down zone the property than they will have to go through the process.

Mr. Leming called Mr. Degen to speak.

Ms. Ross asked if Mr. Leming was done with his presentation so that they could allocate time for Mr. Degen and / or Mr. Glazebrook to speak.

Mr. Leming stated that he was done with his presentation.

Mr. Degen stated that he had received a notice that the property was going to be rezoned to R-12 in 2014. When he went to check on the zoning he was told that the property was zoned R-2. His attorney told him that the R-12 zoning matched his notice and tax bill so he and his partner created an R-12 townhome plan and turned it in.

Mr. Glazebrook stated that he had his engineer add the property up, included the 0.806 acres and all easements that had been granted etc., and that they all add up to approximately 6.2 acres. He stated that his dad had built a ballfield on the parcel and that it was open space for the children of Bragg Hill to play on. He stated that the notice posted on the property showed GPIN 7860-90-9711.

Ms. Paolucci asked whether Mr. Glazebrook or Mr. Degen was aware that the GPIN number had been changed on September 17, 2015.

Mr. Glazebrook stated that was correct.

Ms. Paolucci asked Mr. Craig what the policy on notifying landowners of new GPIN numbers is.

Mr. Craig stated that there was a difference between the land records and the GPIN numbers. The land records hold all records of where property is subdivided. GPIN numbers are just a representation for tax purposes. The City's policy is that when someone comes in to correct an error in the City's GIS system that is when a GPIN number will be changed. Mr. Craig stated that Mr. Degen coming in to clarify the status of the property prompted the change in this case.

Ms. Paolucci asked whether the City went back to deeds at that point.

Mr. Craig stated that, yes, and in this case a plat was provided.

Mr. Muggerridge asked what the motivation was for obtaining the quit claim deed to Mr. Glazebrook and Mr. Degen.

Mr. Leming stated that the 0.806 parcel was the only parcel that was rezoned R-12 and could proceed with. He stated that the piece was also separate from the larger Bragg Hill masterplan that showed three more phases of development with an additional 168 units. The owners wanted to treat this property completely separate from the rest of the Bragg Hill development. He also stated that there were tax reasons to separate the two.

Mr. Muggerridge asked that if the City intended to rezone the parcel to R-2 but made errors and mistakes whether it was the Appellant's position that it didn't matter what they wanted to do, the City didn't do it right.

Mr. Leming stated that ultimately it came down to what the City actually did. Intent is not a valid consideration in challenging a zoning decision. Even if there was a mistake then the best intentions do not change that there was a mistake.

Mr. Jarrell wanted confirmation that the notification sign was posted on the 0.806 acres.

Mr. Glazebrook stated that it was found on the property of Bragg Hill Corporation and that it was found on the corner of the 33.96 acre parcel.

Mr. Lemming stated that he thinks it was to apply to both parcels because the other parcel listed is the big parcel.

Mr. Glazebrook stated that it was on the 33.96 acre parcel.

Mr. Jarrell asked for clarification.

Mr. Glazebrook stated that it was on a pile of rubbish, on the ground, up by the street, where it abuts the townhouses.

Mr. Jarrell asked a hypothetical, if the 0.806 acre parcel was shown on the colored map that the City relied on as being zoned to R-2 but inside the parcel the map shows R-12 what would the zoning be.

Mr. Leming stated that this enhances Mr. Glazebrook's position because despite the color, R-12 would be written within the parcel. The written word should supersede the legal significance of anything that's attached.

Mr. Jarrell asked what the legal principal of how a legal zoning ordinance is to be interpreted.

Mr. Leming stated that the zoning ordinance is not ambiguous. If there is an ambiguity, then like in contract law, the law is resolved against the drafter. In this case that is the City.

Mr. Jarrell asked Ms. Dooley if she agreed.

Ms. Dooley stated that there is no conflict within the ordinance itself. She stated that it was clear that GPIN 7860-90-9711 was rezoned to R-12 and that the GPIN 7860-90-3994 was rezoned to R-2 and that was in the ordinance itself. She stated that the 0.806 parcel was included in GPIN 7860-90-3994 and that there was no inconsistency between the map and the ordinance.

Mr. Jarrell said he respectfully disagreed and asked if she would answer the hypothetical questions.

Ms. Dooley stated that if there was an inconsistency then the rules of statutory construction would apply and the intent of the governing body would govern the interpretation of the ordinance.

Mr. Jarrell stated that he believed there were two GPIN 7860-90-9711 parcels. The original common area parcel was shown on the map as zoned R-12 and the separate 0.806 acre parcel was never shown as a separate GPIN number even though it's a separate parcel. In the written documentation, the 0.806 is part of GPIN 7860-90-9711 and is supposed to be zoned R-12. The other place, it is still GPIN 7860-90-9711 but is colored R-2. His question was, which governed.

Ms. Dooley referred to Ms. William's technical memo that showed what GPIN numbers were assigned to the subject parcel at the time City Council adopted their ordinance. At that time the parcel was identified as part of the big parcel that was rezoned from R-1 to R-2.

Ms. Ross opened up the public hearing to members of the public.

Faith Price, of 1018 Riverwalk Street, spoke in opposition to upholding the appeal.

Ms. Ross closed the public hearing.

Ms. Paolucci asked if Kim William's memo was something attached to the rezoning ordinance in 2014.

Ms. Dooley stated that the memo was produced for this hearing and it showed how the GPIN numbers had been assigned at the time of the rezoning and that at that time the 0.806 acre piece of land was part of GPIN 7860-90-3994.

Ms. Ross stated that there were two points before the board.

Mr. Muggeridge asked Mr. Jarrell if he agreed that the intent was to rezone the whole parcel and the subject parcel was entirely contained with GPIN 7860-90-3994.

Mr. Jarrell stated that he believed that the landowner believed that their parcel was part of GPIN 7860-90-9711 and that the notice to the landowner showed that parcel being rezoned to R-12.

Mr. Muggeridge stated that the notice requirement did not include the 0.806 parcel.

Ms. Paolucci stated that GPIN 7860-90-9711 was listed in the ad.

Mr. Jarrell stated that if there is any confusion over how it was noticed then the landowner did not have any control over the advertising or the rezoning and the board should hold against the City and in the landowner's favor.

Mr. Jarrell made a motion that Bragg Hill Corporation did have a case for appeal. Ms. Paolucci seconded. The motion carried unanimously.

Ms. Ross stated that she was looking for a motion on the second item, whether or not to uphold the Zoning Administrator's decision.

Mr. Muggeridge made a motion "the Zoning Administrator erred in determining that the Subject Parcel is now zoned to the City's R-2 Residential Zoning District and should be zoned R-12". Mr. Jarrell seconded.

Mr. Muggeridge asked Ms. Paolucci whether the intent of the Council was expressed in the ordinance.

Ms. Paolucci said yes. She stated that the ordinance specifically stated GPIN 7860-90-3994 and GPIN 7860-90-9711 and that they were differently zoned.

Mr. Muggeridge asked whether or not the City should have researched all parcels involved in the rezoning prior to using GPIN numbers to rezone.

Ms. Paolucci stated that it was a mass rezoning and that the City couldn't have done research and deed studies on every parcel.

Mr. Muggeridge asked whether or not the intent of the Council would matter more if the outcome was more serious.

Ms. Paolucci stated that the Council knew the difference between R-2, R-12, and R-16 and that the outcome would be that they could build ten townhomes on the property.

Mr. Conway stated that it was a City oversight on having this small parcel of land as R-2 with the rest of the surrounding parcel as R-12.

Ms. Paolucci stated it was an oversight that went all the way back to Spotsylvania County.

The motion carried 3-2 with Mr. Muggeridge and Ms. Ross opposed.

REVIEW OF MINUTES

Mr. Muggeridge made a motion to approve the meeting minutes from April 18, 2016 as presented. Mr. Jarrell seconded. Motion carried 4-0-1 with Ms. Paolucci abstained because she was not present for the April 18, 2016 meeting.

STAFF / BOARD COMMENTS

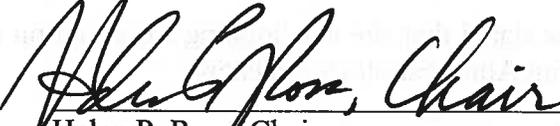
Mr. Craig informed the Board that there was not a meeting scheduled for June 2016.

Ms. Paolucci confirmed that the Appeal for the fence at 814 Cornell Street was still in limbo.

ADJOURNMENT

Mr. Muggeridge made a motion to adjourn. Ms. Paolucci seconded.

Meeting adjourned at 6:05 p.m.


Helen P. Ross, Chair